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Supreme Court of the United States,

OCTOBER TERM, 1922.

No. 260.

CHARLES KELLER, *et al.*, constituting the Public Utilities Commission of the District of Columbia,
Appellants,

vs.

POTOMAC ELECTRIC POWER COMPANY,
Appellee.

APPELLEE'S BRIEF on jurisdiction.

Statement.

Appeal by the Public Utilities Commission of the District of Columbia from a decree of the District Court of Appeals, reversing a final decree of the District Supreme Court and remanding the case to that Court for further proceedings, in accordance with the opinion of the appellate Court.

The suit was in equity, instituted by the appellee to review a determination and order of the Commission, fixing the value of the appellee's property used and useful in its business and to have such valuation set aside and the Commission enjoined from proceeding under it (Record, pp. 2-32).

Note. Copies of the Public Utilities Act of the District are submitted herewith.

The trial Court sustained the valuation and directed judgment dismissing the complaint (Record, pp. 61-2). From that judgment, an appeal was taken by the Company to the District Court of Appeals, which reversed the judgment and remanded the case, as above stated (p. 1062).

Upon the appeal by the Commission to this Court, the case was called for argument on January 24, 1923; and, after the opening by counsel for the appellants, the Court suspended the further hearing until it had heard argument on the questions involved affecting its jurisdiction; and it accordingly assigned the case for argument on February 19, 1923, upon the following questions:

> I. Whether Congress can vest in this Court, under the restrictions upon its appellate jurisdiction under the Constitution, the character of review of the proceedings of the Public Utilities Commission contemplated by the Act creating it.
>
> II. Whether an appeal can be taken to this Court until a final judgment has been pronounced in the District Court of Appeals.
>
> III. Whether such judgment is final.

The appeal to this Court was expressly authorized by Paragraph 64 of the Public Utilities Act. So much of that paragraph as is pertinent to the questions under consideration is as follows:

> "That any public utility and any person or corporation interested, being dissatisfied with any order or decision of the commission fixing any valuation, rate or rates, tolls, charges, schedules, joint rate or rates, or regulation, requirement, act, service or other thing complained of may commence a proceeding in equity in the Supreme Court of the District of Columbia against the commission, as defendants, to vacate, set aside, or modify any such

decision or order, on the ground that the valuation, rate or rates, tolls, charges, schedules, joint rate or rates, or regulation, requirement, act, service or other thing complained of fixed in such order is unlawful, inadequate, or unreasonable. The answer of the commission, on any such action being instituted against it, or the answer of any public utility on any such action being commenced by said commission against it, shall be filed within ten days, whereupon said proceeding shall be at issue and stand ready for trial.

"All such proceedings shall have precedence over any civil cause of a different nature pending in such court, and the Supreme Court of the District of Columbia shall always be deemed open for the trial thereof, and the same shall be tried and determined as are equity proceedings in said court. Any party, including said commission, may appeal from the order or decree of said court to the Court of Appeals of the District of Columbia, and therefrom to the Supreme Court of the United States, which shall thereupon have and take jurisdiction in every such appeal. Pending the decision of said appeal, the commission may suspend the decision or order appealed from for such a period as it may deem fair and reasonable under the circumstances."

Paragraph 65 of the Act provides that the proceeding taken to review the determination of the Commission shall be taken within 120 days after such determination and that this right of review shall terminate absolutely at the expiration of that period.

For convenience, the questions put by the Court will be considered in their reverse order.

POINTS.

FIRST.

The judgment appealed from was final.

The Court of Appeals not only reversed the judgment of the lower Court, but directed that Court to proceed in accordance with its opinion (Record, p. 1062).

The decision of the Court of Appeals was based upon two grounds:

> 1. That the trial Court did not exercise the powers conferred upon it by the Act;
>
> 2. That the trial Court erred in approving the valuation made by the Commission as of a date anterior to the time when the valuation was made.

I. If the decision of the Court of Appeals had been based solely upon the first ground, its direction to the trial Court to proceed accordingly would have been in the nature of a direction for a new trial or rehearing and would not have constituted a final judgment.

II. But in definitely deciding that the trial Court was in error in approving the date taken by the Commission for determining the value of the property, the appellate Court distinctly and finally determined the entire controversy and left nothing for the trial Court to do but enter judgment sustaining the complaint, declaring the valuation made by the Commission a nullity and setting it aside accordingly.

> Forgay *v.* Conrad, 6 How., 201, 204;
> Thomson *v.* Dean, 7 Wall., 342;
> Railroad Co. *v.* Bradleys, 7 Wall., 575.

What this Court said in Int. Com. Comm. *v.* Baird (194 U. S., 25, 38) is very much to the point:

> "The present proceeding is not merely advisory to the commission, but, as was said in Interstate Commerce Commission *v.* Brimson, a judgment rendered will be a final and indisputable basis of action as between the commission and the defendant, and furnish a precedent for similar cases."

III. *Cases distinguished.*

The following decisions of this Court are not in conflict with what has just been said.

B. & O. R. Co. *v.* Int. Com. Comm., 215 U. S., 216;

Southern Pacific Co. *v.* Int. Com. Comm., 215 U. S., 226;

United States *v.* Terminal Railroad Association, 215 U. S., 595.

In those cases, the statute did not expressly give the right to appeal and the cases were accordingly governed by the provisions of the Judicial Code. No final judgment had been entered by the Circuit Court of Appeals, and that Court having been unable to reach a decision upon the question of law involved, certified it to this Court, which held that the certificate was not authorized and that what was done was merely an attempt to confer original jurisdiction upon this Court, contrary to the express provisions of the Federal Constitution.

The case of American Security Co. *v.* District of Columbia (224 U. S., 491) turned upon the proper construction to be given to Section 250 of the Judicial Code, providing for the review of a final judgment of the District Court of Appeals in certain cases; and it was held that the Section did not apply to laws passed by Congress of a purely local character, which did not rise above the importance of municipal ordinances.

SECOND.

Immaterial whether judgment of District Court of Appeals was final.

I. There is no provision in the Federal Constitution limiting the appellate jurisidction of this Court to appeals from final judgments. That restriction is contained in the Judicial Code, which was enacted in 1911 (36 Stat., 1087). But Congress has the same power to remove or modify this restriction as it had to impose it. There are many instances where the power to modify restrictions upon the right of appeal has been exercised.

In the case of the Public Utilities Act, now under consideration, Congress was of the opinion that any decision made by the Commission, pursuant to the powers conferred upon it, was of such great public interest and importance that, in reviewing the exercise of those powers, the decision of the Supreme Court of the District, and, in case of an appeal to the District Court of Appeals, the decision of that Court, whether resulting in a final judgment or not, might be carried by appeal to this Court by either party in interest. What was said by this Court in Int. Com. Comm. *v.* Baird (194 U. S., 25, 39), where a direct appeal was permitted from an order of a Circuit Court to this Court, is peculiarly applicable to the case at bar:

> "Congress deemed it imperative that such cases, affecting the commerce of the country as well as personal rights, should be promptly determined in a court of last resort."

II. This Court has not hesitated to review appeals from interlocutory orders and decrees, where the right was expressly conferred by statute.

United States *v.* B. & O. R. Co., 225 U. S., 306.

In that case, an appeal was taken from an interlocutory order of the Commerce Court, which granted a preliminary injunction against the enforcement of an order of the Interstate Commerce Commission. The appeal was permitted by Section 210 of the Judicial Code.

A similar provision is contained in the Act of October 22, 1913 (38 Stat., 220), allowing an appeal to this Court from a preliminary injunction granted by the Statutory Court (Barnes' Fed. Code, 1919, Sec. 969).

THIRD.

Power of Congress to confer jurisdiction.

I.

Limitations upon the powers of regulatory commissions.

An act creating a commission with regulatory powers over public utilities must prescribe the principles and procedure to be observed by the commission in the exercise of such powers. Otherwise, the statute will be invalid, in attempting to confer discretionary legislative powers upon the commission.

Wichita R. & L. Co. *v.* Public Utilities Comm. (decided Nov. 13, 1922), 43 Sup. Ct., 51.

II.

Right of judicial review.

A regulatory act will be declared invalid unless it contains provisions enabling the utilities to review in the courts acts of the commission complained of as affecting their property rights.

Ohio Valley Water Co. *v.* Ben Avon Borough, 253 U. S., 287;

Saratoga Springs *v.* Saratoga Gas, etc., Co., 191 N. Y., 123.

III.

Jurisdiction as limited by Section 2 of Article III of the Constitution.

Under this provision of the Constitution, Congress could not, in the present case, confer appellate jurisdiction upon this Court, unless there is a constitutional question involved or unless a judicial question arises under the Act itself, which the courts have power to consider.

It will be shown hereafter (*post*, p. 21), that Congress may confer jurisdiction upon the courts in other instances, where it is proper for it to do so, in order to exercise fully the express powers conferred upon it.

IV.

Only justiciable questions can be considered by the Court under Article III.

Courts were not formed for the purpose of giving advice or determining moot questions.

The general question as to what constitutes a justiciable case was carefully considered and the authorities were reviewed in Muskrat *v.* United States (219 U. S., 346). In that case, Congress attempted to confer jurisdiction upon the courts to determine whether certain statutes were valid which had been passed affecting the title to Indian lands. There was no controversy between parties whose interests were adverse; and the Court was thus called upon merely for an opinion in the nature of advice concerning legislative action.

The courts cannot, of course, be required to pass upon questions which do not definitely determine rights to which there are conflicting claims made by the parties before it.

V.

Scope of the question.

Whether the case now before the Court involves a question which Congress could require this Court to pass upon is a question which is not confined to the jurisdiction of this Court alone, but extends to the original jurisdiction conferred upon the Supreme Court of the District, as well as upon the Court of Appeals. If Congress had the power to confer jurisdiction upon the District Supreme Court in a case of this kind, it also had the power to provide for a review by the District Court of Appeals, and by this Court, of the decision of the lower Court.

To deny this power and hold that the case at bar presents no justiciable controversy would be to invalidate the entire Act. For Congress clearly intended, as an integral part of the Act, to provide for a prompt review of the determinations and orders of the Commission; and this indeed it was bound to do (Ohio Valley Water Co. *v.* Ben Avon Borough, *supra*). The Court will adopt a construction of the Act, if possible, which will sustain it.

United States *v.* Delaware & Hudson Co., 213 U. S., 366.

VI.

In valuing the property, the Commission acted judicially.

1. Under the Interstate Commerce Act, the commissioners, in many instances, necessarily act in a judicial capacity.

Int. Com. Comm. *v.* Cincinnati, etc., R. Co., 167 U. S., 479, 501.

2. Commissioners appointed to appraise property for purposes of taxation or condemnation, or to assess benefits, act judicially.

Hagar *v.* Reclamation District, 111 U. S., 701;

Central of Georgia Ry. *v.* Wright, 207 U. S., 127, 138;

Barhyte *v.* Shepherd, 35 N. Y., 238;

Clark *v.* Norton, 49 N. Y., 243, 244;

Stuart *v.* Palmer, 74 N. Y., 183, 190.

In the Hagar case (*supra*), this Court, referring to the powers of commissioners of appraisal in tax cases, said (p. 710):

> "But where a tax is levied on property not specifically, but according to its value, to be ascertained by assessors appointed for that purpose, upon such evidence as they may obtain, a different principle comes in. *The officers, in estimating the value, act judicially;* and in most of the States provision is made for the correction of errors committed by them, through boards of revision or equalization, sitting at designated periods provided by law to hear complaints respecting the justice of the assessments. . . . In some States, instead of a board of revision or equalization, the assessment may be revised by proceedings in the courts and be there corrected if erroneous, or set aside if invalid."

In Barhyte *v.* Shepherd (*supra*), where the subject was carefully considered in two concurring opinions, and where the authorities were referred to in detail, the Court said, in considering the powers of assessors valuing property for the purposes of taxation (p. 251):

> "In each and all of the cases I have suggested under this statute, the action of the as-

> sessors is eminently judicial in its nature. To administer oaths, to hear evidence, to weigh its effect, to compare it with the law, and to decide the questions presented, are of the essence of judicial action. To make the figures indicating a deduction, and to make the deduction itself, on the assessment roll, may be conceded to be a ministerial act; but to arrive at the conclusion, by hearing and weighing evidence, judging of its credibility, and comparing the evidence with the provisions of law, that the plaintiff was entitled to a deduction, is as far from a ministerial act as can well be imagined."

3. Under the District Utilities Act, the Commissioners necessarily act in a judicial capacity in determining what property is used and useful in the business of the utility, in passing upon the numerous questions that arise in ascertaining the value of such property for the purposes of a rate base, such as organization and development expenses entering into the capital account, depreciation, working capital, franchise rights, the weight to be given to the testimony of witnesses, etc., etc. The present record is full of instances where the Commissioners passed upon the admissibility and effect of the evidence; and they entirely disregarded the evidence of value furnished by the Company, on the ground that the Company valued the property as of the time when the valuation was made, rather than as of an earlier date which the Commission thought would represent normal conditions.

VII.

Importance of the question of valuation.

1. In Stuart *v.* Palmer (74 N. Y., 183), the Court, in a learned opinion by Earl, *J.*, said (p. 190):

> "'Due process of law' is not confined to judicial proceedings, but extends to every case which may deprive a citizen of life, liberty or property, whether the proceeding be judicial, administrative or executive in its nature. This great guaranty is always and everywhere present to protect the citizen against arbitrary interference with these sacred rights."

2. The District Utilities Act (effective March 4, 1913) required the Commission to proceed as soon as practicable (Par. 6) to value the properties of public utilities in the District "used in or useful" to their business at the time of the valuation (Pars. 6, 7).

These valuations are required to be published in the annual reports of the Commission (Par. 20).

While general powers of regulation are conferred upon the Commission, the main object of the Act was to see that the public was properly served for a reasonable compensation.

The Commission is not required to value all the property of the utilities, but only the property used or useful in their business; thus showing clearly that the object of the Act was to obtain a valuation which should govern the rate to be charged.

Smyth *v.* Ames, 169 U. S., 466, 546-7;
Denver *v.* Denver Union Water Co., 246 U. S., 178, 190-1.

3. The utility is entitled only to such return upon the value of its property as is adequate under varying conditions.

Willcox *v.* Consolidated Gas Co., 212 U. S., 19, 48;

Lincoln Gas Co. *v.* Lincoln, 250 U. S., 256, 267-8.

4. A utility owes to its consumers the duty of supplying them with its product upon reasonable terms.

Chicago, &c., Ry. Co. *v.* Minnesota, 134 U. S., 578, 596-7;

Smyth *v.* Ames, 169 U. S., 466, 544;

and the District Utlities Act expressly requires the rate to be reasonable and just (Par. 2).

5. The Commission is charged by the Act with the duty of seeing that the utilities comply with the requirements of the statute and that the charges are reasonable (Par. 18).

When, therefore, under this Act, the Commission formally determines the value of the property of the utility, it is bound to see to it that the utility does not charge a rate in excess of what constitutes an adequate return upon the value of the property, as determined by the Commission. When that value has been determined, the Commission can readily ascertain whether the return received by the company is excessive or inadequate.

6. The question of the rate being only incidental to that of the valuation of the property, the latter question is the one involving the real controversy between the utility and the public, which is represented by the Commission. Where, as in the present case, the valuation found by the Commission is only about one-half that claimed by the

Company, a case clearly arises in which the Company has a sound basis for claiming that it has been deprived of its property without due process of law and without just compensation.

The Company was not obliged, therefore, to wait until the rate had been fixed on this valuation before reviewing the decision. To do that would be to subject it to further burdens and hardships and possibly to lose the right of appeal under the Act (Pars. 64-5), if the Commission should defer fixing the rate for more than 120 days, after valuing the property.

7. Moreover, in the case of a public utility, the official valuation placed by a recognized commission upon its property is a matter of the utmost importance to the utility concerned, as well as to the public. It is official notice to the world that the property of the utility is actually worth only a certain sum, although the utility may claim that it is worth twice the amount found. The valuation itself, before any rate is based upon it, affects the property rights of the utility. It concerns the company vitally, as its balance sheet is revolutionized, its credit standing impaired and the foundation upon which its securities were issued, undermined. In case the company should have to appeal to its stockholders or to the public for additional capital, or in case an opportunity should arise to dispose of its property and business to another company, or if consolidation with another company were contemplated, the official valuation would effectually prevent the utility from making the sale or consolidation upon the basis of the value claimed by the company; because, no one entering into negotiations with it would dare place a greater value upon the property than had been

found by the Commission, inasmuch as the company would not be permitted to earn a return upon an additional value without a contest in the courts.

Furthermore, in the case of a public utility, there is the additional consideration of the company's relations with its consumers. Upon the harmony of those relations depends largely the success of its business. If the public is led to believe, by the official act of the Commission, that the property of the company is worth only half the value claimed by the company, dissatisfaction and complaints will inevitably follow, to the serious interference with the efforts of the management to serve the public properly.

8. The District Utilities Act, in express terms (Par. 65), makes the valuation of the property found by the Commission final and conclusive, unless an appeal to the courts is taken by the utility within 120 days after the valuation is made. The Company cannot, therefore, wait until after a rate is made, based upon the valuation; because such rate may not be fixed within the 120 days.

VIII.

Right to judicial review of valuation expressly recognized by this Court.

1. The right of a utility to a judicial review of a valuation of its property made by statutory commissioners has been expressly recognized by this Court.

Kansas City Southern Ry. *v.* Int. Com. Comm., 252 U. S., 178.

That case arose under the Valuation Act of March 1, 1913 (37 Stat., 701), amending the Interstate Commerce Commission Act, by conferring power upon the Commission to value the properties of common carriers.

The Commission undertook to value the property of the Kansas City Southern Railway Company, and, in doing so, it refused to apply a principle of valuation prescribed by the statute. Upon the tentative valuation made by the Commission, on which the Company had the right to be heard, the Company objected to this refusal; and, upon the Commission's persisting in its decision, the Company applied to the Supreme Court of the District for a writ of mandamus, directing the Commission to make the valuation in accordance with the terms of the statute. A demurrer to the answer was [redacted], and the application denied; and the case was then taken to the District Court of Appeals, which affirmed the decision below. Upon a writ of error to this Court, the decisions of the lower courts were reversed and the case was remanded, with instructions that the Supreme Court should grant the writ of mandamus.

That case goes much further than it is necessary to go in the present case; because, the action of the Court was taken before the valuation had been final and it was also taken in the exercise of a clearly recognized judicial right and not in pursuance of a remedy expressly given by the statute.

This Court thus explicitly determined that the valuation of the property of a public utility raises a judicial question for the courts.

If such a decision could be reached under the Interstate Commerce Act, there should certainly be no hesitation in upholding the right of review ex-

pressly given by the Public Utilities Act of the District. Like the Federal Trade Act, which this Court considered in its recent decision (January 8, 1923) in Federal Trade Commission *v.* Curtis Publishing Co., "the language of the statute is broad and confers power of review not found in the Interstate Commerce Act". Moreover, under the latter Act, the value is merely *prima facie* evidence of correctness, whereas, under the Public Utilities Act, the value found becomes conclusive, unless appealed from within 120 days (Par. 65).

2. In Ohio Valley Co. *v.* Ben Avon Borough (253 U. S., 287), this Court, in referring to the right of appeal conferred by the Statute from any order or determination of the Commission, said (p. 291):

> "Without doubt, the duties of the courts, upon appeals under the Act, are judicial in character."

IX.

Official appraisal of property universally recognized as constituting a case reviewable by the courts.

1. In the assessment of property for purposes of taxation or benefit, the owner must be given an opportunity to be heard. Failure to afford him such an opportunity invalidates the assessment, as it deprives the owner of his property without due process of law.

Davidson *v.* New Orleans, 96 U. S., 97, 105, 107;

Hagar *v.* Reclamation District, 111 U. S., 701, 710;

Security Trust Co. *v.* Lexington, 203 U. S., 323, 333;

Jewell *v.* Van Steenburgh, 58 N. Y., 85, 90-1;

Stuart *v.* Palmer, 74 N. Y., 183.

A tax statute for the assessment of property, which does not provide for notice to the owner, is unconstitutional and void.

Remsen *v.* Wheeler, 105 N. Y., 573, 579.

2. The right to be heard upon the valuation of property about to be taken, in whole or in part, for the public benefit, being thus secured by the Constitution, it necessarily follows that the courts have the power and duty to protect it; and, in the protection of this right, it can make no difference whether all of the owner's property is taken under the power of eminent domain, or whether only a

small portion of it is taken, as in the case of a general tax or in fixing a limit upon the return of property devoted to the public use.

3. This right of judicial review, in the case of the official valuation of property, was expressly recognized by this Court in Hagar *v.* Reclamation District (*supra*), where the Court said (p. 710):

> "In some States, intead of a board of revision or equalization, the assessment may be revised by proceedings in the courts and be there corrected if erroneous."

4. In New York, the valuation made by the appraisers may be reviewed by a writ of certiorari (Tax Law, Secs. 290-1).

In Massachusetts, a direct appeal lies to the Supreme Court (Gen. L. 1921, Ch. 59, Sec. 65); and an appeal to the courts is expressly provided in Nebraska (L. 1903, Ch. 73).

And, generally, this right to a judicial review of the valuation is recognized in the different States.

> 37 Cyclopedia of Law and Procedure, 1113-14, 1120-22.

5. There is thus complete unanimity throughout the country, both in the legislatures and in the courts, recognizing the propriety and right to a judicial review of official valuations of property. That unanimity has existed throughout the entire period of the nation's existence; and, indeed, the right seems never to have been questioned.

X.

Power of Congress in the exercise of its express powers to invoke the aid of the courts.

1. Although Article III of the Constitution limits the jurisdiction of the Federal courts, this limitation is subject to the power of Congress to enlarge the jurisdiction, where such enlargement may reasonably be required to enable Congress to exercise the express powers conferred upon it by the Constitution.

Int. Com. Comm. *v.* Brimson, 154 U. S., 447;

Int. Com. Comm. *v.* Baird, 194 U. S., 25, 38;

Ellis *v.* Int. Com. Comm., 237 U. S., 434.

2. Subdivision 17, of Section 8, of Article I of the Constitution, empowers Congress to exercise exclusive jurisdiction, "in all cases whatsoever", over the District of Columbia.

Subdivision 18 of the same Section confers power upon Congress "to make all laws which may be necessary and proper for carrying into execution the foregoing powers and all other powers vested by this constitution in the government of the United States or in any department or officer thereof".

3. Congress thus has just as complete power to regulate the public utilities in the District of Columbia as it has to regulate interstate commerce. Indeed, its power in the former respect is clearer, because it is not involved in the conflict which so frequently arises between the Federal and State authorities in questions arising under the regulation of commerce.

4. The power of Congress to confer jurisdiction, in cases where the limitations contained in Article III of the Constitution might exclude such jurisdiction, was distinctly recognized by this Court in the Brimson case (*supra*).

That case involved the question whether the provision of the Interstate Commerce Act was valid which empowered the Commission to require by subpœna the attendance of witnesses and the production of books and papers, and whether jurisdiction could be conferred upon the Federal courts to compel compliance with this provision.

The Circuit Court held that the provision authorizing the Commission to invoke the aid of the Federal Court was unconstitutional and void, as imposing on the judicial tribunals of the United States duties that were not judicial in their nature (53 Fed., 476, 480).

In an opinion by Mr. Justice Harlan, in which the authorities were reviewed, the conclusion was reached by this Court that the Court below was in error; and the judgment was accordingly reversed.

The argument of this Court was based solely upon the proposition that Congress had the power to regulate interstate commerce, and that, in doing so, it could appoint a commission with such powers as were suitable and proper for carrying out the object in view, and that to make the power effective, it could invoke such judicial aid as it deemed advisable. Upon this point, the Court quoted the following statement from the opinion of Chief Justice Marshall, in McCulloch *v.* Maryland (4 Wheat., 326, 421):

> "The sound construction of the Constitution must allow to the national legislature that

> discretion with respect to the means by which the powers it confers are to be carried into execution which will enable that body to perform the high duties assigned to it, in the manner most beneficial to the people. Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited but consistent with the letter and spirit of the Constitution, are constitutional."

The Court also quoted with approval from the same opinion (p. 423) the following:

> "Where the law is not prohibited and is really calculated to effect any of the objects entrusted to the government, to undertake here to inquire into the degree of its necessity would be to pass the line which circumscribes the judicial department and to tread on legislative ground."

Applying this test to the provisions of the Interstate Commerce Commission Act, this Court, in the Brimson case, said (p. 473):

> "The test of the power of Congress is not the judgment of the courts that particular means are not the best that could have been employed to effect the end contemplated by the legislative department. The judiciary can only inquire whether the means devised in the execution of a power granted are forbidden by the Constitution. It cannot go beyond that inquiry without entrenching upon the domain of another department of the government."

The power to require the production of books and papers was one which the Court thought was essential to the effective execution of the statute and which might in any particular case result in a

difference of opinion or dispute between the Commission and the persons affected by their ruling; and as to such a difference, the Court said (p. 477):

> "It cannot be that the general government, with all the power conferred upon it by the people of the United States, is helpless in such an emergency, and is unable to provide some method, judicial in form, and direct in its operation, for the prompt and conclusive determination of this dispute."

The Court recognized that the action of Congress must be regarded as lawful, "unless the incompatibility between the Constitution and the act of Congress is clear and strong" (p. 478). The Court referred (p. 486) to "the broad discretion with which it (Congress) is invested by the Constitution, of employing all or any of the means that are appropriate or plainly adapted to an end which it has unquestioned power to accomplish, namely, the protection of interstate commerce against improper burdens and discriminations". And again (p. 487):

> "The proceeding is one for determining rights arising out of specified matters in dispute that concern both the general public and the individual defendants. It is one in which a judgment may be rendered that will be conclusive upon the parties until reversed by this court."

5. The argument in the Brimson case is peculiarly applicable to the case at bar. The District Utilities Act confers broader powers upon the Commission than are conferred by the Interstate Commerce Act; and it was a matter of importance both to the utilities in the District and to the general

public that provision should be made for the prompt disposition of any disputes growing out of the exercise of the powers conferred upon the Commission. Under this Act, no question is of more vital concern, both to the public and to the utilities, than the value of the property upon which the charge for the service is based. Upon the correct ascertainment of that value depends the power of the company to serve the public properly; and only upon such a basis can the public expect to receive adequate service.

> Knoxville *v.* Knoxville Water Co., 212 U. S., 1, 18.

6. The decision in the Brimson case was followed in the Baird and Ellis cases (*supra*). In the Baird case, this Court said (p. 38):

> "We cannot read these statutes without perceiving the manifest purpose of Congress to facilitate the disposition of cases brought under the direction of the Attorney General to enforce the provisions of the Anti-Trust and Interstate Commerce Acts."

FOURTH.

This Court has jurisdiction to hear the appeal herein now pending before it.

Washington, February 19, 1923.

S. R. Bowen,
Attorney for Appellee.

John A. Garver,
John S. Barbour,
of Counsel.